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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ISAM ABUNADI,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF NORTH
AMERICA,

Defendant.

2:11-cv-01492-LDG-GWF

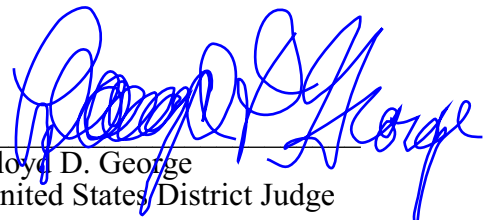
ORDER

15 Defendant's motion to dismiss (#11) brought pursuant to Fed. R. Civ. P. 12(b)(6)
16 challenges whether the plaintiff's complaint states "a claim upon which relief can be granted."
17 FRCP 12(b)(6). As summarized by the Supreme Court, a plaintiff must allege "only enough facts
18 to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
19 570 (2007). Nevertheless, while a complaint "does not need detailed factual allegations, a
20 plaintiff's obligations to provide the 'grounds' of his 'entitle[ment] to relief' requires more than
21 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."
22 *Id.* (citations omitted). In deciding whether the factual allegations state a claim, the court accepts
23 those allegations as true, as "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's
24 disbelief of a complaint's factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).
25 Further, the court "construe[s] the pleadings in the light most favorable to the nonmoving party."
26 *Outdoor Media Grp., Inc. v. City of Beaumont*, 506 F. 3d 895, 900 (9th Cir. 2007).

1 Plaintiff alleges in his complaint that defendant failed to provide coverage and benefits due
2 to the plaintiff after plaintiff was involved in a serious car accident and suffered severe injuries.
3 Defendant's motion to dismiss argues that plaintiff has failed to exhaust his administrative
4 remedies since defendant's ruling on the insurance claims filed by the plaintiff is still pending.
5 Plaintiff responds to defendant's motion to dismiss by alleging that defendant has violated the
6 time periods for resolving an insurance claim under the Employment Retirement Income Security
7 Act (ERISA), 29 C.F.R § 2560.503-1 *et seq.* Due to the factual nature of the exhaustion analysis,
8 the arguments raised by defendant in its motion to dismiss need to be addressed in a summary
9 judgment context. Accordingly,

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11 THE COURT HEREBY ORDERS that defendant's motion to dismiss (#11) is DENIED.

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13 Dated this 1 day of August, 2012.

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16 Lloyd D. George
United States District Judge
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